

**Objection to the Denial of Asbestos License Renewal,
Liberty Environmental Specialties, Cloverdale, Indiana.
1999 OEA 53 (98-A-J-1967)**

OFFICIAL SHORT CITATION NAME: When referring to 1999 OEA 53, cite this case as
Liberty Environmental Specialties, 1999 OEA 53.

TOPICS:

asbestos
license
renewal
summary judgment
waiver
notice of violation
violation
denial

PRESIDING JUDGES:

Penrod, Lasley

PARTY REPRESENTATIVES:

Petitioner: Gregory P. Cafouros, Esq.: Kroger Gardis & Regas
IDEM: Aaron Schmoll, Esq.

ORDER ISSUED:

December 14, 1999

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

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**RECOMMENDED ORDER GRANTING PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

This constitutes notice that on August 25, 1999, Petitioner, by counsel, filed a Motion for Summary Judgment in the above-captioned matter. Respondent, the Indiana Department of Environmental Management (IDEM), by counsel, filed a Response on September 1, 1999. On September 29, 1999, the presiding Administrative Law Judge held oral argument in this matter. At the oral argument, Petitioner's Motion for Summary Judgment was granted for the following reasons:

1. On December 17, 1999, the Administrative Law Judge granted partial summary judgment in Petitioner's favor. At that time, there was an outstanding Notice of Violation (NOV) dated December 10, 1997. After the order granting summary judgment and the order denying motion to reconsider was issued, Petitioner and IDEM entered into an Agreed Order resolving the December 10, 1997 NOV.
2. The Agreed Order contains substantially the same language as the other Agreed Orders entered into in this matter, including language that IDEM desires to resolve the matter "without hearing or adjudication."
3. Further, by signing the Agreed Order, Petitioner does not admit that the December 10, 1999 violation occurred.
4. Rather than going forward with proving the December 10, 1997 violation occurred, IDEM again chose to resolve the matter and fine Petitioner.
5. The Undisputed Facts, Discussion and Conclusions of Law contained in the Order Granting Partial Summary Judgment are hereby incorporated herein by reference. Since IDEM has chosen to treat the December 10, 1997 violations in the same manner as the other violations, it has waived its right to use that violation as a basis for denying reaccreditation to Petitioner.
6. There is no genuine issue of material fact in dispute and, therefore, summary judgment is appropriate in this case.

The Administrative Law Judge hereby recommends that Petitioner's Motion for Summary Judgment be **GRANTED** and that this matter be **REMANDED** to IDEM for further consideration consistent with this order, the Order Granting Partial Summary Judgment and Order Denying Motion for Reconsideration.

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Appeal Rights

You are hereby notified that pursuant to §4-21.5-3-29, you have the right to appeal only the Recommended Order of the Administrative Law Judge. In order to do so, you must object in a writing that does the following:

- (1) specifies which portions of the Recommended Order you object to;
- (2) specifies which portions of the administrative record supports the objection(s); and
- (3) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days. Objections should be sent to:

Wayne E. Penrod, Chief Administrative Law Judge
Office of Environmental Adjudication
150 West Market Street, Suite 618
Indianapolis, IN 46204

A final order disposing of the case or an order remanding the case to the administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:

- (1) the date that the order was issued under §4-21.5-3-27;
- (2) the receipt of briefs; or
- (3) the close of oral argument;

unless the period is waived or extended with the written consent of all parties or for good cause shown.

IT IS SO ORDERED in Indianapolis, Indiana this 5th day of October, 1999.

Linda C. Lasley
Administrative Law Judge